

Assembly Bill No. 978

CHAPTER 291

An act to amend Sections 1523.2, 1530.5, 1534, 1546, 1548, 1568.07, 1568.0822, 1569.33, 1569.48, 1569.49, 1596.98, 1596.99, 1597.56, and 1597.62 of, and to add Sections 1534.1, 1550.7, 1558.3, 1568.0715, 1568.0825, 1568.094, 1569.351, 1569.510, 1569.595, 1596.818, 1596.8867, 1596.8899, and 1597.58 to, the Health and Safety Code, and to amend Section 18285 of the Welfare and Institutions Code, relating to community care facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2008. Filed with
Secretary of State September 25, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 978, Benoit. Care facilities.

(1) Existing law, the California Community Care Facilities Act, and the California Residential Care Facilities for the Elderly Act, provide for the licensure and regulation of community care facilities and residential care facilities for the elderly respectively and requires every licensed community care facility and residential care facility for the elderly to be subject to unannounced visits by the State Department of Social Services.

Existing law authorizes the department to levy civil penalties upon community care facilities licensed pursuant to the act, licensed residential care facilities for persons with chronic, life-threatening illness, licensed residential care facilities for the elderly, and licensed day care centers, whereby the nature or seriousness of the violation warrants a higher penalty or an immediate assessment.

This bill would, among other things, provide that serious violations include specified situations. It would also require the department to assess an immediate civil penalty, as prescribed, for any of those specified serious violations, and would require that moneys collected from those civil penalties imposed for those specified serious violations be expended by the department for specified purposes, upon appropriation by the Legislature.

(2) Existing law, the California Child Day Care Facilities Act, provides for the licensure and regulation of child day care facilities, including day care centers and family day care homes, by the State Department of Social Services.

The bill would, among other things, require the department to specify in its licensing report all violations that, if not corrected, will have a direct and immediate risk to the health, safety, or personal rights of children in care. The bill would impose additional inspection requirements upon child day care facilities, including day care centers and family day care homes, and

would require the department to ensure that a licensee's plan of correction is verifiable and measurable.

The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature hereby finds and declares that the effective and efficient collection of civil penalties imposed for violations of state law and regulations is a means to ensure compliance with the laws protecting the health and safety of vulnerable populations in licensed community care facilities.

(b) It is the intent of the Legislature to do all of the following:

(1) Ensure that vulnerable persons in licensed facilities are protected from threats to health and safety, especially from violations of law where the nature or seriousness of the violation or the frequency of the violation warrants immediate action.

(2) Ensure that civil penalties are in addition to, and are not intended to supplant, other remedies available to the State Department of Social Services, such as suspension, revocation, or temporary suspension orders.

(3) Ensure overall program integrity in the operation of facilities licensed by the State Department of Social Services.

SEC. 2. Section 1523.2 of the Health and Safety Code is amended to read:

1523.2. (a) Beginning with the 1996–97 fiscal year, there is hereby created in the State Treasury the Technical Assistance Fund, from which money, upon appropriation by the Legislature in the Budget Act, shall be expended by the department to fund administrative and other activities in support of the licensing program.

(b) In each fiscal year, fees collected by the department pursuant to Sections 1523.1, 1568.05, 1569.185, and 1596.803 shall be deposited into the Technical Assistance Fund created pursuant to subdivision (a) and shall be expended by the department for the purpose of ensuring the health and safety of all individuals provided care and supervision by licensees and to support activities of the licensing program, including, but not limited to, monitoring facilities for compliance with applicable laws and regulations.

(c) Notwithstanding any other provision of law, revenues received by the department from payment of civil penalties imposed on licensed facilities pursuant to Sections 1522, 1536, 1547, 1548, 1568.0821, 1568.0822, 1568.09, 1569.17, 1569.485, and 1569.49 shall be deposited into the Technical Assistance Fund created pursuant to subdivision (a), and shall be expended by the department exclusively for the technical assistance, training, and education of licensees.

SEC. 3. Section 1530.5 of the Health and Safety Code is amended to read:

1530.5. (a) The department, in establishing regulations, including provisions for periodic inspections, under this chapter for foster family homes and certified family homes of foster family agencies, shall consider these homes as private residences, and shall establish regulations for these foster family homes and certified family homes of foster family agencies as an entirely separate regulation package from regulations for all other community care facilities. Certified family homes of foster family agencies shall not be subject to civil penalties pursuant to this chapter. Foster family homes shall not be subject to civil penalties pursuant to Section 1548, except for violations of a serious nature described in subdivision (b) of that section. Foster family homes also shall be subject to civil penalties pursuant to Sections 1522 and 1547. The department, in adopting and amending regulations for these foster family homes and certified family homes of foster family agencies, shall consult with foster parent and foster family agency organizations in order to ensure compliance with the requirement of this section.

(b) This section shall not apply to small family homes or foster family agencies as defined in Section 1502.

SEC. 4. Section 1534 of the Health and Safety Code is amended to read:

1534. (a) (1) Every licensed community care facility shall be subject to unannounced visits by the department. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

(A) The department shall conduct an annual unannounced visit to a facility under any of the following circumstances:

(i) When a license is on probation.

(ii) When the terms of agreement in a facility compliance plan require an annual evaluation.

(iii) When an accusation against a licensee is pending.

(iv) When a facility requires an annual visit as a condition of receiving federal financial participation.

(v) In order to verify that a person who has been ordered out of a facility by the department is no longer at the facility.

(B) (i) The department shall conduct annual unannounced visits to no less than 20 percent of facilities not subject to an evaluation under subparagraph (A). These unannounced visits shall be conducted based on a random sampling methodology developed by the department.

(ii) If the total citations issued by the department exceed the previous year's total by 10 percent, the following year the department shall increase the random sample by an additional 10 percent of the facilities not subject to an evaluation under subparagraph (A). The department may request additional resources to increase the random sample by 10 percent.

(C) Under no circumstance shall the department visit a community care facility less often than once every five years.

(D) In order to facilitate direct contact with group home clients, the department may interview children who are clients of group homes at any public agency or private agency at which the client may be found, including, but not limited to, a juvenile hall, recreation or vocational program, or a

nonpublic school. The department shall respect the rights of the child while conducting the interview, including informing the child that he or she has the right not to be interviewed and the right to have another adult present during the interview.

(2) The department shall notify the community care facility in writing of all deficiencies in its compliance with the provisions of this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the facility.

(3) Reports on the results of each inspection, evaluation, or consultation shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection.

(b) (1) Nothing in this section shall limit the authority of the department to inspect or evaluate a licensed foster family agency, a certified family home, or any aspect of a program where a licensed community care facility is certifying compliance with licensing requirements.

(2) Upon a finding of noncompliance by the department, the department may require a foster family agency to deny or revoke the certificate of approval of a certified family home, or take other action the department may deem necessary for the protection of a child placed with the family home. The family home shall be afforded the due process provided pursuant to this chapter.

(3) If the department requires a foster family agency to deny or revoke the certificate of approval, the department shall serve an order of denial or revocation upon the certified or prospective foster parent and foster family agency that shall notify the certified or prospective foster parent of the basis of the department's action and of the certified or prospective foster parent's right to a hearing.

(4) Within 15 days after the department serves an order of denial or revocation, the certified or prospective foster parent may file a written appeal of the department's decision with the department. The department's action shall be final if the certified or prospective foster parent does not file a written appeal within 15 days after the department serves the denial or revocation order.

(5) The department's order of the denial or revocation of the certificate of approval shall remain in effect until the hearing is completed and the director has made a final determination on the merits.

(6) A certified or prospective foster parent who files a written appeal of the department's order with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The certified or prospective foster parent shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(7) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. In all proceedings conducted in

accordance with this section the standard of proof shall be by a preponderance of the evidence.

(8) The department may institute or continue a disciplinary proceeding against a certified or prospective foster parent upon any ground provided by this section, enter an order denying or revoking the certificate of approval, or otherwise take disciplinary action against the certified or prospective foster parent, notwithstanding any resignation, withdrawal of application, surrender of the certificate of approval, or denial or revocation of the certificate of approval by the foster family agency.

(9) A foster family agency's failure to comply with the department's order to deny or revoke the certificate of employment by placing or retaining children in care shall be grounds for disciplining the licensee pursuant to Section 1550.

SEC. 5. Section 1534.1 is added to the Health and Safety Code, to read:

1534.1. (a) The department shall ensure that the licensee's plan of correction is verifiable and measurable. The plan of correction shall specify what evidence is acceptable to establish that a deficiency has been corrected. This evidence shall be included in the department's facility file.

(b) The department shall specify in its licensing report all violations that, if not corrected, will have a direct and immediate risk to the health, safety, or personal rights of clients in care.

(c) The department shall complete all complaint investigations and place a note of final conclusion in the department's facility file, consistent with the confidentiality provisions in subdivision (c) of Section 1538, regardless of whether the licensee voluntarily surrendered the license.

SEC. 6. Section 1546 of the Health and Safety Code is amended to read:

1546. The department may require not more than 50 percent of each penalty assessed pursuant to Section 1548 to be transmitted to the department for use by the Community Care Licensing Division of the state department to establish an emergency resident relocation fund to be utilized for the relocation and care of residents when a facility's license is revoked or temporarily suspended, when appropriated by the Legislature. The money in the fund shall cover costs, including but not limited to, transportation expenses, expenses incurred in notifying family members, and any other costs directly associated with providing continuous care to the residents. The department shall seek the advice of providers in developing a state plan for emergency resident relocation.

SEC. 7. Section 1548 of the Health and Safety Code is amended to read:

1548. (a) In addition to the suspension, temporary suspension, or revocation of a license issued under this chapter, the department may levy a civil penalty.

(b) The amount of the civil penalty shall not be less than twenty-five dollars (\$25) or more than fifty dollars (\$50) per day for each violation of this chapter except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment, or both, as determined by the department. In no event,

shall a civil penalty assessment exceed one hundred fifty dollars (\$150) per day per violation.

(c) Notwithstanding Section 1534, the department shall assess an immediate civil penalty of one hundred fifty dollars (\$150) per day per violation for any of the following serious violations:

(1) (A) Fire clearance violations, including, but not limited to, overcapacity, ambulatory status, inoperable smoke alarms, and inoperable fire alarm systems. The civil penalty shall not be assessed if the licensee has done either of the following:

(i) Requested the appropriate fire clearance based on ambulatory, nonambulatory, or bedridden status, and the decision is pending.

(ii) Initiated eviction proceedings.

(B) A licensee denied a clearance for bedridden residents may appeal to the fire authority, and, if that appeal is denied, may subsequently appeal to the Office of the State Fire Marshal, and shall not be assessed an immediate civil penalty until the final appeal is decided, or after 60 days has passed from the date of the citation, whichever is earlier.

(2) Absence of supervision, as required by statute or regulation.

(3) Accessible bodies of water when prohibited in this chapter or regulations adopted pursuant to this chapter.

(4) Accessible firearms, ammunition, or both.

(5) Refused entry to a facility or any part of a facility in violation of Section 1533, 1534, or 1538.

(6) The presence of an excluded person on the premises.

(d) Notwithstanding Section 1534, any facility that is cited for repeating the same violation of this chapter within 12 months of the first violation is subject to an immediate civil penalty of one hundred fifty dollars (\$150) and fifty dollars (\$50) for each day the violation continues until the deficiency is corrected.

(e) Any facility that is assessed a civil penalty pursuant to subdivision (d) which repeats the same violation of this chapter within 12 months of the violation subject to subdivision (d) is subject to an immediate civil penalty of one hundred fifty dollars (\$150) for each day the violation continues until the deficiency is corrected.

(f) The department shall adopt regulations implementing this section.

(g) As provided in Section 11466.31 of the Welfare and Institutions Code, the department may offset civil penalties owed by a group home against moneys to be paid by a county for the care of minors after the group home has exhausted its appeal of the civil penalty assessment. The department shall provide the group home a reasonable opportunity to pay the civil penalty before instituting the offset provision.

SEC. 8. Section 1550.7 is added to the Health and Safety Code, to read:

1550.7. (a) The department shall conduct an unannounced visit to a facility within 30 days after the effective date of a temporary suspension of a license in order to ensure that the facility is nonoperational, unless the department previously has verified that the facility is nonoperational.

(b) The department shall conduct an unannounced visit to a facility within 30 days after the effective date of a revocation of a license, in order to ensure that the facility is nonoperational, unless the department previously has verified that the facility is nonoperational.

SEC. 9. Section 1558.3 is added to the Health and Safety Code, to read:

1558.3. The department shall conduct an unannounced visit to a facility within 30 days after the department serves an order of immediate exclusion from the facility upon the licensee or a person subject to immediate removal or exclusion from the facility pursuant to paragraph (3) of subdivision (c) of Section 1522 and subdivision (c) of Section 1558 and in order to ensure that the excluded person is not within the facility, unless the department previously has verified that the excluded person is not within the facility.

SEC. 9.2. Section 1568.07 of the Health and Safety Code is amended to read:

1568.07. (a) (1) Within 90 days after a facility accepts its first resident for placement following its initial licensure, the department shall inspect the facility to evaluate compliance with rules and regulations and to assess the facility's continuing ability to meet regulatory requirements. The licensee shall notify the department, within five business days after accepting its first resident for placement, that the facility has commenced operating.

(2) The department may take appropriate remedial action as provided for in this chapter.

(b) (1) Every licensed residential care facility shall be periodically inspected and evaluated for quality of care by a representative or representatives designated by the director. Evaluations shall be conducted at least annually and as often as necessary to ensure the quality of care being provided.

(2) During each licensing inspection the department shall determine if the facility meets regulatory standards, including, but not limited to, providing residents with the appropriate level of care based on the facility's license, providing adequate staffing and services, updated resident records and assessments, and compliance with basic health and safety standards.

(3) If the department determines that a resident requires a higher level of care than the facility is authorized to provide, the department may initiate a professional level of care assessment by an assessor approved by the department. An assessment shall be conducted in consultation with the resident, the resident's physician and surgeon, and the resident's case manager, and shall reflect the desires of the resident, the resident's physician and surgeon, and the resident's case manager. The assessment also shall recognize that certain illnesses are episodic in nature and that the resident's need for a higher level of care may be temporary.

(4) The department shall notify the residential care facility in writing of all deficiencies in its compliance with this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the facility.

(5) Reports on the results of each inspection, evaluation, or consultation shall be kept on file in the department, and all inspection reports, consultation

reports, lists of deficiencies, and plans of correction shall be open to public inspection.

(c) Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, enter and inspect any place providing personal care, supervision, and services, at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, this chapter.

(d) No licensee shall discriminate or retaliate in any manner against any person receiving the services of the facility of the licensee, or against any employee of the facility, on the basis, or for the reason, that a person or employee or any other person has initiated or participated in an inspection pursuant to Section 1568.071.

(e) Any person who, without lawful authorization from a duly authorized officer, employee, or agent of the department, informs an owner, operator, employee, agent, or resident of a residential care facility, of an impending or proposed inspection or evaluation of that facility by personnel of the department, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000), by imprisonment in the county jail for a period not to exceed 180 days, or by both a fine and imprisonment.

SEC. 10. Section 1568.0715 is added to the Health and Safety Code, to read:

1568.0715. (a) The department shall ensure that the licensee's plan of correction is verifiable and measurable. The plan of correction shall specify what evidence is acceptable to establish that a deficiency has been corrected. This evidence shall be included in the department's facility file.

(b) The department shall specify in its licensing report all violations that, if not corrected, will have a direct and immediate risk to the health, safety, or personal rights of residents in care.

(c) The department shall complete all complaint investigations and place a note of final conclusion in the department's facility file, regardless of whether the licensee voluntarily surrendered the license.

SEC. 11. Section 1568.0822 of the Health and Safety Code is amended to read:

1568.0822. (a) In addition to the suspension, temporary suspension, or revocation of a license issued under this chapter, the department may levy a civil penalty. The department shall adopt regulations setting forth the appeal procedures for deficiencies.

(b) The amount of the civil penalty shall not be less than twenty-five dollars (\$25) or more than fifty dollars (\$50) per day for each violation of this chapter, except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment, or both, as determined by the department. In no event shall a civil penalty assessment exceed one hundred fifty dollars (\$150) per day per violation.

(c) Notwithstanding Section 1568.07, the department shall assess an immediate civil penalty of one hundred fifty dollars (\$150) per day per violation for any of the following serious violations:

(1) (A) Fire clearance violations, including, but not limited to, overcapacity, ambulatory status, inoperable smoke alarms, and inoperable fire alarm systems. The civil penalty shall not be assessed if the licensee has done either of the following:

(i) Requested the appropriate fire clearance based on ambulatory, nonambulatory, or bedridden status, and the decision is pending.

(ii) Initiated eviction proceedings.

(B) A licensee denied a clearance for bedridden residents may appeal to the fire authority, and, if that appeal is denied, may subsequently appeal to the Office of the State Fire Marshal, and shall not be assessed an immediate civil penalty until the final appeal is decided, or after 60 days has passed from the date of the citation, whichever is earlier.

(2) Absence of supervision, as required by statute and regulation.

(3) Accessible bodies of water, when prohibited in this chapter or regulations adopted pursuant to this chapter.

(4) Accessible firearms, ammunition, or both.

(5) Refused entry to a facility or any part of a facility in violation of Section 1568.07 or 1568.071.

(6) The presence of an excluded person on the premises.

(d) Notwithstanding Section 1568.07, any residential care facility that is cited for repeating the same violation of this chapter within 12 months of the first violation is subject to an immediate civil penalty of one hundred fifty dollars (\$150) and fifty dollars (\$50) for each day the violation continues until the deficiency is corrected.

(e) Any residential care facility that is assessed a civil penalty pursuant to subdivision (d) which repeats the same violation of this chapter within 12 months of the violation subject to subdivision (d) shall be assessed an immediate civil penalty of one thousand dollars (\$1,000) and one hundred dollars (\$100) for each day the violation continues until the deficiency is corrected, provided that the violation is a serious violation.

(f) The department shall adopt regulations implementing this section.

SEC. 12. Section 1568.0825 is added to the Health and Safety Code, to read:

1568.0825. (a) The department shall conduct an unannounced visit to a facility within 30 days after the effective date of a temporary suspension of a license in order to ensure that the facility is nonoperational, unless the department previously has verified that the facility is nonoperational.

(b) The department shall conduct an unannounced visit to a facility within 30 days after the effective date of a revocation of a license in order to ensure that the facility is nonoperational, unless the department previously has verified that the facility is nonoperational.

SEC. 13. Section 1568.094 is added to the Health and Safety Code, to read:

1568.094. The department shall conduct an unannounced visit to a facility within 30 days after the department serves an order of immediate exclusion from the facility upon the licensee or a person subject to immediate removal or exclusion from the facility pursuant to paragraph (4) of subdivision (c) of Section 1568.09 and subdivision (c) of Section 1568.092 in order to ensure that the excluded person is not within the facility, unless the department previously has verified that the excluded person is not within the facility.

SEC. 13.2. Section 1569.33 of the Health and Safety Code is amended to read:

1569.33. (a) Every licensed residential care facility for the elderly shall be subject to unannounced visits by the department. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

(b) The department shall conduct an annual unannounced visit of a facility under any of the following circumstances:

- (1) When a license is on probation.
- (2) When the terms of agreement in a facility compliance plan require an annual evaluation.
- (3) When an accusation against a licensee is pending.
- (4) When a facility requires an annual visit as a condition of receiving federal financial participation.
- (5) In order to verify that a person who has been ordered out of the facility for the elderly by the department is no longer at the facility.

(c) (1) The department shall conduct annual unannounced visits to no less than 20 percent of facilities not subject to an evaluation under subdivision (b). These unannounced visits shall be conducted based on a random sampling methodology developed by the department.

(2) If the total citations issued by the department exceed the previous year's total by 10 percent, the following year the department shall increase the random sample by 10 percent of the facilities not subject to an evaluation under subdivision (b). The department may request additional resources to increase the random sample by 10 percent.

(d) Under no circumstance shall the department visit a residential care facility for the elderly less often than once every five years.

(e) The department shall notify the residential care facility for the elderly in writing of all deficiencies in its compliance with the provisions of this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the facility.

(f) Reports on the results of each inspection, evaluation, or consultation shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection.

(g) As a part of the department's evaluation process, the department shall review the plan of operation, training logs, and marketing materials of any residential care facility for the elderly that advertises or promotes special

care, special programming, or a special environment for persons with dementia to monitor compliance with Sections 1569.626 and 1569.627.

SEC. 14. Section 1569.351 is added to the Health and Safety Code, to read:

1569.351. (a) The department shall ensure that the licensee's plan of correction is verifiable and measurable. The plan of correction shall specify what evidence is acceptable to establish that a deficiency has been corrected. This evidence shall be included in the department's facility file.

(b) The department shall specify in its licensing report all violations that, if not corrected, will have a direct and immediate risk to the health, safety, or personal rights of residents in care.

(c) The department shall complete all complaint investigations and place a note of final conclusion in the department's facility file, regardless of whether the licensee voluntarily surrendered the license.

SEC. 15. Section 1569.48 of the Health and Safety Code is amended to read:

1569.48. A fund may be established to which not more than 50 percent of each penalty assessed pursuant to Section 1569.49 is transmitted to the department for use by the Community Care Licensing Division of the department to establish an emergency resident relocation fund to be utilized for the relocation and care of residents when a facility's license is revoked or temporarily suspended, when appropriated by the Legislature. The money in the fund shall cover costs, including, but not limited to, transportation expenses, expenses incurred in notifying family members, and any other costs directly associated with providing continuous care to the residents. The department shall seek the advice of providers in developing a state plan for emergency resident relocation.

SEC. 16. Section 1569.49 of the Health and Safety Code is amended to read:

1569.49. (a) In addition to the suspension, temporary suspension, or revocation of a license issued under this chapter, the department may levy a civil penalty. The department shall adopt regulations setting forth the appeal procedures for deficiencies.

(b) The amount of the civil penalty shall not be less than twenty-five dollars (\$25) or more than fifty dollars (\$50) per day for each violation of this chapter except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment, or both, as determined by the department. In no event, shall a civil penalty assessment exceed one hundred fifty dollars (\$150) per day per violation.

(c) Notwithstanding Section 1569.33, the department shall assess an immediate civil penalty of one hundred fifty dollars (\$150) per day per violation for any of the following serious violations:

(1) (A) Fire clearance violations, including, but not limited to, overcapacity, ambulatory status, inoperable smoke alarms, and inoperable fire alarm systems. The civil penalty shall not be assessed if the licensee has done either of the following:

(i) Requested the appropriate fire clearance based on ambulatory, nonambulatory, or bedridden status, and the decision is pending.

(ii) Initiated eviction proceedings.

(B) A licensee denied a clearance for bedridden residents may appeal to the fire authority, and, if that appeal is denied, may subsequently appeal to the Office of the State Fire Marshal, and shall not be assessed an immediate civil penalty until the final appeal is decided, or after 60 days has passed from the date of the citation, whichever is earlier.

(2) Absence of supervision as required by statute or regulation.

(3) Accessible bodies of water, when prohibited in this chapter or regulations adopted pursuant to this chapter.

(4) Accessible firearms, ammunition, or both.

(5) Refused entry to a facility or any part of a facility in violation of Section 1569.32, 1569.33, or 1569.35.

(6) The presence of an excluded person on the premises.

(d) Notwithstanding Section 1569.33, any residential care facility for the elderly that is cited for repeating the same violation of this chapter within 12 months of the first violation is subject to an immediate civil penalty of one hundred fifty dollars (\$150) and fifty dollars (\$50) for each day the violation continues until the deficiency is corrected.

(e) Any residential care facility for the elderly that is assessed a civil penalty pursuant to subdivision (d) which repeats the same violation of this chapter within 12 months of the violation subject to subdivision (d) shall be assessed an immediate civil penalty of one thousand dollars (\$1,000) and one hundred dollars (\$100) for each day the violation continues until the deficiency is corrected.

(f) The department shall adopt regulations implementing this section.

SEC. 17. Section 1569.510 is added to the Health and Safety Code, to read:

1569.510. (a) The department shall conduct an unannounced visit to a facility within 30 days after the effective date of a temporary suspension of a license in order to ensure that the facility is nonoperational, unless the department previously has verified that the facility is nonoperational.

(b) The department shall conduct an unannounced visit to a facility within 30 days after the effective date of a revocation of a license in order to ensure that the facility is nonoperational, unless the department previously has verified that the facility is nonoperational.

SEC. 18. Section 1569.595 is added to the Health and Safety Code, to read:

1569.595. The department shall conduct an unannounced visit to a facility within 30 days after the department serves an order of immediate exclusion from the facility upon the licensee or a person subject to immediate removal or exclusion from the facility pursuant to paragraph (3) of subdivision (c) of Section 1569.17 and subdivision (c) of Section 1569.58 in order to ensure that the excluded person is not within the facility, unless the department previously has verified that the excluded person is not within the facility.

SEC. 19. Section 1596.818 is added to the Health and Safety Code, to read:

1596.818. (a) The department shall specify in its licensing report all violations that, if not corrected, will have a direct and immediate risk to the health, safety, or personal rights of children in care.

(b) The department shall complete all complaint investigations and place a note of final conclusion in the department's facility file, consistent with the confidentiality requirements of Section 1596.853, regardless of whether the licensee voluntarily surrendered his or her license.

SEC. 20. Section 1596.8867 is added to the Health and Safety Code, to read:

1596.8867. (a) The department shall conduct an unannounced visit to a facility within 30 days after the effective date of a temporary suspension of a license, in order to ensure that the facility is nonoperational, unless the department has previously verified that the facility is nonoperational.

(b) The department shall conduct an unannounced visit to a facility within 30 days after the effective date of a revocation of a license in order to ensure that the facility is nonoperational, unless the department has previously verified that the facility is nonoperational.

SEC. 21. Section 1596.8899 is added to the Health and Safety Code, to read:

1596.8899. The department shall conduct an unannounced visit to a facility within 30 days after the department serves an order of immediate exclusion from the facility upon the licensee or a person subject to immediate removal or exclusion from the facility pursuant to paragraph (2) of subdivision (c) of Section 1596.871 or subdivision (c) of Section 1596.8897 in order to ensure that the excluded person is not within the facility, unless the department previously has verified that the excluded person is not within the facility.

SEC. 22. Section 1596.98 of the Health and Safety Code is amended to read:

1596.98. (a) The department shall notify the day care center in writing of all deficiencies in its compliance with this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the center. Upon a finding of noncompliance, the department may levy a civil penalty which shall be paid to the department each day until the department finds the center in compliance.

(b) In developing a plan of correction both the licensee and the department shall give due consideration to the following factors:

- (1) The gravity of the violation.
- (2) The history of previous violations.
- (3) The possibility of a threat to the health or safety of any child in the facility.
- (4) The number of children affected by the violation.
- (5) The availability of equipment or personnel necessary to correct the violation, if appropriate.

(c) The department shall ensure that the licensee's plan of correction is verifiable and measurable. The plan of correction shall specify what evidence is acceptable to establish that a deficiency has been corrected. This evidence shall be included in the department's facility file.

(d) The department shall adopt regulations establishing procedures for the imposition of civil penalties under this section.

SEC. 23. Section 1596.99 of the Health and Safety Code is amended to read:

1596.99. (a) In addition to the suspension, temporary suspension, or revocation of a license issued under this chapter or Chapter 3.4 (commencing with Section 1596.70), the department may levy a civil penalty.

(b) The amount of the civil penalty shall not be less than twenty-five dollars (\$25) nor more than fifty dollars (\$50) per day for each violation of this chapter except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment, or both, as determined by the department. In no event shall a civil penalty assessment exceed one hundred fifty dollars (\$150) per day per violation.

(c) Notwithstanding Sections 1596.893a, 1596.893b, and 1596.98, the department shall assess an immediate civil penalty of one hundred fifty (\$150) per day per violation for any of the following serious violations:

(1) Fire clearance violations, including, but not limited to, overcapacity, inoperable smoke alarms, and inoperable fire alarm systems.

(2) Absence of supervision, including, but not limited to, a child left unattended, supervision of a child by a person under 18 years of age, and lack of supervision resulting in a child wandering away.

(3) Accessible bodies of water.

(4) Accessible firearms, ammunition, or both.

(5) Refused entry to a facility or any part of a facility in violation of Section 1596.852, 1596.853, or 1597.09.

(6) The presence of an excluded person on the premises.

(d) Notwithstanding Sections 1596.893a, 1596.893b, and 1596.98, any day care center that is cited for repeating the same violation of this chapter or Chapter 3.4 (commencing with Section 1596.70), within 12 months of the first violation is subject to an immediate civil penalty of one hundred fifty dollars (\$150) for each day the violation continues until the deficiency is corrected.

(e) Any day care center that is assessed a civil penalty under subdivision (d) and that repeats the same violation of this chapter within 12 months of the violation subject to subdivision (d) shall be assessed an immediate civil penalty of one hundred fifty dollars (\$150) for each day the violation continues until the deficiency is corrected.

(f) Notwithstanding any other provision of law, revenues received by the state from the payment of civil penalties imposed on licensed child care centers pursuant to this chapter or Chapter 3.4 (commencing with Section 1596.70), shall be deposited in the Child Health and Safety Fund, created pursuant to Chapter 4.6 (commencing with Section 18285) of Part 6 of

Division 9 of the Welfare and Institutions Code, and shall be expended, upon appropriation by the Legislature, pursuant to subdivision (f) of Section 18285 of the Welfare and Institutions Code exclusively for the technical assistance, orientation, training, and education of licensed day care center providers.

SEC. 24. Section 1597.56 of the Health and Safety Code is amended to read:

1597.56. (a) The department shall notify a family day care home in writing of all deficiencies in its compliance with this act and the rules and regulations adopted pursuant to this act, and shall set a reasonable length of time for compliance by the family day care home. Upon a finding of noncompliance with a plan of correction, the department may levy a civil penalty that shall be paid to the department each day until the department finds the family day care home in compliance.

(b) In developing a plan of correction, both the licensee and the department shall give due consideration to the following factors:

- (1) The gravity of the violation.
- (2) The history of previous violations.
- (3) The possibility of a threat to the health or safety of any child in the facility.
- (4) The number of children affected by the violation.
- (5) The availability of equipment or personnel necessary to correct the violation, if appropriate.

(c) The department shall ensure that the licensee's plan of correction is verifiable and measurable. The plan of correction shall specify what evidence is acceptable to establish that a deficiency has been corrected. This evidence shall be included in the department's facility file.

(d) The department shall adopt regulations establishing procedures for the imposition of civil penalties under this section.

SEC. 25. Section 1597.58 is added to the Health and Safety Code, to read:

1597.58. (a) In addition to the suspension, temporary suspension, or revocation of a license issued under this chapter, the department may levy a civil penalty.

(b) The amount of the civil penalty shall not be less than twenty-five dollars (\$25) nor more than fifty dollars (\$50) per day for each violation of this chapter except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment or both, as determined by the department. In no event shall a civil penalty assessment exceed one hundred fifty dollars (\$150) per day per violation.

(c) Notwithstanding Sections 1596.893a, 1596.893b, 1597.56, and 1597.62 the department shall assess an immediate civil penalty of one hundred fifty dollars (\$150) per day per violation for any of the following serious violations:

- (1) Any violation that results in the injury, illness, or death of a child.

(2) Absence of supervision, including, but not limited to, a child left unattended, a child left alone with a person under 18 years of age, and lack of supervision resulting in a child wandering away.

(3) Accessible bodies of water.

(4) Accessible firearms, ammunition, or both.

(5) Refused entry to a facility or any part of a facility in violation of Sections 1596.852, 1596.853, 1597.55a and 1597.55b.

(6) The presence of an excluded person on the premises.

(d) Notwithstanding Sections 1596.893a, 1596.893b, 1597.56 and 1597.62, any family day care home that is cited for repeating the same violation of this chapter or Chapter 3.4 (commencing with Section 1596.70), within 12 months of the first violation is subject to an immediate civil penalty assessment of up to one hundred fifty dollars (\$150) and may be assessed up to fifty dollars (\$50) for each day the violation continues until the deficiency is corrected.

(e) Any family day care home that is assessed a civil penalty under subdivision (d) that repeats the same violation of this chapter within 12 months of the violation subject to subdivision (d) shall be assessed an immediate assessment of up to one hundred fifty dollars (\$150) and may be assessed up to one hundred fifty dollars (\$150) for each day the violation continues until the deficiency is corrected.

(f) Notwithstanding any other provision of law, revenues received by the state from the payment of civil penalties imposed on licensed family day care homes pursuant to this chapter or Chapter 3.4 (commencing with Section 1596.70), shall be deposited in the Child Health and Safety Fund, created pursuant to Chapter 4.6 (commencing with Section 18285) of Part 6 of Division 9 of the Welfare and Institutions Code, and shall be expended, upon appropriation by the Legislature, pursuant to subdivision (f) of Section 18285 of the Welfare and Institutions Code exclusively for the technical assistance, orientation, training, and education of licensed family day care home providers.

SEC. 25.2. Section 1597.62 of the Health and Safety Code is amended to read:

1597.62. (a) The department may impose civil penalties of not less than twenty-five dollars (\$25) and not more than fifty dollars (\$50) per day per violation for uncorrected violations that present an immediate or potential risk to the health and safety of children in care. The penalties shall be imposed in accordance with Sections 1596.893b and 1597.56.

(b) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

SEC. 26. Section 18285 of the Welfare and Institutions Code is amended to read:

18285. (a) There is hereby created in the State Treasury the Child Health and Safety Fund for the purposes specified in this section.

(b) Moneys for this fund shall be derived from the license plate program provided for pursuant to Section 5028 of the Vehicle Code and from civil penalties on child day care facility providers.

(c) Moneys in the fund shall be expended, upon appropriation by the Legislature, for the purposes specified in subdivisions (d), (e) and (f).

(d) Fifty percent of moneys derived from the license plate program pursuant to Section 5072 of the Vehicle Code shall be available, upon appropriation, to the State Department of Social Services for the purpose of administering provisions of Sections 1596.816, 1596.87, 1596.872b, 1596.893b 1596.895, 1596.95, 1597.091, 1597.54, 1597.541, 1597.542, 1597.55b and 1597.62 of the Health and Safety Code. The State Department of Social Services shall allocate these special funds according to the following priorities:

(1) Site visits performed pursuant to Sections 1597.091 and 1597.55b of the Health and Safety Code.

(2) The monitoring responsibility of the child care advocate program.

(3) Training for investigative and licensing field staff.

(4) Other aspects of the child care advocate program performed pursuant to Section 1596.872b of the Health and Safety Code.

(5) The salary of the chief of the child care licensing branch.

In order to implement the list of priorities set forth in this subdivision, and to complete implementation of subdivision (a) of Section 1596.816 of the Health and Safety Code, the State Department of Social Services may, as necessary, fund appropriate administrative support costs.

(e) Fifty percent of moneys derived from the license plate program pursuant to Section 5072 of the Vehicle Code shall be available, upon appropriation, for programs which address any of the following child health and safety concerns and that are either to be carried out within a two-year period or whose implementation is dependent upon one-time initial funding:

(1) Child abuse prevention, except that not more than 25 percent of the moneys in this fund shall be used for this purpose. Ninety percent of the 25 percent shall be deposited in the county children's trust fund, established pursuant to Section 18966 of the Welfare and Institutions Code, for the support of child abuse prevention services in the community, and 10 percent of the 25 percent shall be deposited in the State Children's Trust Fund, established pursuant to Section 18969, for public education, training, and technical assistance.

(2) Vehicular safety, including restraint warnings and education programs.

(3) Drowning prevention.

(4) Playground safety standards.

(5) Bicycle safety.

(6) Gun safety.

(7) Fire safety.

(8) Poison control and safety.

(9) In-home safety.

(10) Childhood lead poisoning.

(11) Sudden infant death syndrome.

(f) Moneys derived from civil penalties imposed on child day care facility providers shall be made available, upon appropriation, to the State Department of Social Services exclusively for the technical assistance, orientation, training, and education of child day care facility providers.

SEC. 27. The department may, with input from stakeholders, adopt emergency regulations necessary to implement this act. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulations shall become effective immediately upon filing with the Secretary of State. The regulations shall not remain in effect more than 180 days, unless the adopting agency complies with all the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

SEC. 28. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The need to provide, at the earliest possible time, that all facilities licensed by the State Department of Social Services are subject to immediate civil penalties for a violation of a serious nature and to ensure that language exists and is consistent for all facility categories.